

HOUSE BILL 1288
By Dunn

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 34, relative to enact the "Drug Dealer Liability Act of 1997".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following new part 3:

Section 29-34-301. This part shall be known and may be cited as the "Drug Dealer Liability Act of 1997".

Section 29-34-302. The purpose of this part is to provide a civil remedy for damages to persons in a community injured as a result of the use of an illegal controlled substance. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to controlled substances in utero ("drug babies"). This part will enable them to recover damages from those persons in the community who have joined the marketing of illegal controlled substances. A further purpose of this part is to shift, to the extent possible, the cost of the damage caused by the existence of the market for illegal controlled substances in a community to those who illegally profit from that market. The further purpose of this part is to establish the prospect of substantial monetary loss as a deterrent to those who have not yet

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entered into the distribution market for illegal controlled substances. The further purpose is to establish an incentive for users of illegal controlled substances to identify and seek payment for their own treatment from those dealers who have sold illegal controlled substances to the user in the past.

Section 29-34-303. The general assembly finds and declares all of the following:

(a) Although the criminal justice system is an important weapon against the marketing of illegal controlled substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal controlled substances. The persons who have joined the marketing of illegal controlled substances should bear the cost of the harm caused by the market in the community.

(b) The threat of liability under this part serves as an additional deterrent to a recognizable segment of the network for illegal controlled substances. A person who has assets unrelated to the sale of illegal controlled substances, who markets illegal controlled substances at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time, casual dealer who has not yet made substantial profits. This part provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

(c) This part imposes liability against all participants in the marketing of illegal controlled substances, including small dealers, particularly those in the workplace, who are not usually the focus of

criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

Section 29-34-304. As used in this part, unless the context otherwise requires:

(a) “Marketing of illegal controlled substances” means the possession for sale, sale, or distribution of a specified illegal controlled substance.

(b) “Individual user of an illegal controlled substance” means the individual whose use of a specified illegal controlled substance is the basis of an action brought under this part.

(c) “Level 1 offense” means the possession for sale of less than four (4) ounces or the sale or furnishing of less than one (1) ounce of a specified illegal controlled substance, or the cultivation of at least twenty-five (25) plants but less than fifty (50) plants, the furnishing of more than twenty-eight point five (28.5) grams, or the possession for sale or sale of up to four (4) pounds of marijuana.

(d) “Level 2 offense” means the possession for sale of four (4) ounces or more but less than eight (8) ounces of, or the sale or furnishing of one (1) ounce or more but less than two (2) ounces of, a specified illegal controlled substance, or the cultivation of at least fifty (50) but less than seventy-five (75) plants, the possession for sale of four (4) pounds or more but less than eight (8) pounds, or the sale or furnishing of more than one (1) pound but less than five (5) pounds of marijuana.

(e) “Level 3 offense” means the possession for sale of eight (8) ounces or more but less than sixteen (16) ounces of, or the sale or

furnishing of two (2) ounces or more but less than four (4) ounces of a specified illegal controlled substance, or the cultivation of at least seventy-five (75) but less than one hundred (100) plants, the possession for sale of eight (8) pounds or more but less than sixteen (16) pounds, or the sale or furnishing of more than five (5) pounds but less than ten (10) pounds of marijuana.

(f) "Level 4 offense" means the possession for sale of sixteen (16) ounces or more of, or the sale or furnishing of four (4) ounces or more of, a specified illegal controlled substance, or the cultivation of one hundred (100) plants or more of, the possession for sale of sixteen (16) pounds of, or the sale or furnishing of more than ten (10) pounds of marijuana.

(g) "Participate in the marketing of illegal controlled substances" means to transport, import into this state, sell, possess with intent to sell, furnish, administer, or give away, or offer to transport, import into this state, sell, possess with intent to sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away a specified illegal controlled substance. "Participate in the marketing of illegal controlled substances" does not include the purchase or receipt of an illegal controlled substance for personal use only.

(h) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or a foreign country.

(i) "Period of illegal use" means, in relation to the individual user of an illegal controlled substance, the time of the individual's first illegal

use of an illegal controlled substance to the accrual of the cause of action.

(j) "Place of illegal activity" means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual's use of an illegal controlled substance.

(k) "Place of participation" means, in relation to a defendant in an action brought under this part, each county in which the person participates in the marketing of illegal controlled substances during the period of the person's participation in the marketing of illegal controlled substances.

(l) "Specified illegal controlled substance" means cocaine, phencyclidine, heroin, or methamphetamine and any other illegal controlled substance the manufacture, cultivation, importation into this state, transportation, possession for sale, sale, furnishing, administering, or giving away of which is a violation of Tennessee Code Annotated, Title 39, Chapter 17, Part 4.

Section 29-34-305.

(a) A person who knowingly participates in the marketing of illegal controlled substances within this state is liable for civil damages as provided in this part. A person may recover damages under this part for injury resulting from an individual's use of an illegal controlled substance.

(b) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency of the state is not liable for participating in the marketing of illegal controlled substances, if the participation is in furtherance of an official investigation.

Section 29-34-306.

(a) Any one (1) or more of the following persons may bring an action for damages caused by an individual's use of an illegal controlled substance:

(1) A parent, legal guardian, child, spouse, or sibling of the individual controlled substance user.

(2) An individual who was exposed to an illegal controlled substance in utero.

(3) An employer of the individual user of an illegal controlled substance.

(4) A medical facility, insurer, employer, or other nongovernmental entity that funds a drug treatment program or employee assistance program for the individual user of an illegal controlled substance or that otherwise expended money on behalf of the individual user of an illegal controlled substance. No public agency other than a public agency medical facility shall have a cause of action under this part.

(5) A person injured as a result of the intentional, reckless, or negligent actions of an individual user of an illegal controlled substance.

(b) A person entitled to bring an action under this section may seek damages from one (1) or more of the following:

(1) A person who sold, administered, or furnished an illegal controlled substance to the individual user of the illegal controlled substance.

(2) A person who knowingly participated in the marketing of illegal controlled substances, if all of the following apply:

(A) The place of illegal activity by the individual user of an illegal controlled substance is within the city, city and county, or unincorporated area of the county in which the defendant's place of participation is situated.

(B) The defendant's participation in the marketing of illegal controlled substances was connected with the same type of specified illegal controlled substance used by the individual user of an illegal controlled substance, and the defendant has been convicted of an offense for that type of specified illegal controlled substance.

(C) The defendant participated in the marketing of illegal controlled substances at any time during the period the individual user of an illegal controlled substance illegally used the controlled substance.

(D) The underlying offense for the conviction of the specified illegal controlled substance occurred in the same county as the individual user's place of use.

(c) As used in subdivision (b), "knowingly participated in the marketing of illegal controlled substances" means a conviction for transporting, importing into this state, selling, possessing with intent to sell, furnishing, administering, or giving away, or offering to transport, import into this state, sell, furnish, administer, or give away a specified illegal controlled substance or a quantity of

marijuana specified in subdivision (e), (f), (g), or (h) of Section 29-34-304, which are separate in time.

(d) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of an illegal controlled substance.

(2) Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, medical anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal controlled substance.

(3) Exemplary damages.

(4) Reasonable attorney fees.

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 29-34-307.

(a) An individual user of an illegal controlled substance may not bring an action for damages caused by the use of an illegal controlled substance, except as otherwise provided in this section. An individual user of an illegal controlled substance may bring an action for damages

caused by the use of an illegal controlled substance only if all of the following conditions are met:

(1) The individual personally discloses to law enforcement authorities all of the information known to the individual regarding all that individual's sources of illegal controlled substances;

(2) The individual has not used an illegal controlled substance within the thirty (30) days before filing the action; and

(3) The individual continues to remain free of the use of an illegal controlled substance throughout the pendency of the action.

(b) A person entitled to bring an action under this section may seek damages only from a person who transported, imported into this state, sold, possessed with intent to sell, furnish, administered, or gave away the specified illegal controlled substance actually used by the individual user of an illegal controlled substance.

(c) A person entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of an illegal controlled substance.

(2) Reasonable attorney fees.

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 29-34-308.

(a) A third party shall not pay damages awarded under this part, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

(b) A cause of action authorized pursuant to this part may not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

Section 29-34-309. A person whose participation in the marketing of illegal controlled substances constitutes the following level of offense shall be rebuttably presumed to be responsible in the following amounts:

(a) For a level 1 offense, twenty-five percent (25%) of the damages.

(b) For a level 2 offense, fifty percent (50%) of the damages.

(c) For a level 3 offense, seventy-five percent (75%) of the damages.

(d) For a level 4 offense, one hundred percent (100%) of the damages.

Section 29-34-310.

(a) Two (2) or more persons may join in one (1) action under this part as plaintiffs if their respective actions have at least one (1) market for illegal controlled substances in common and if any portion of the period of use of an illegal controlled substance overlaps with the period of use of an illegal controlled substance for every other plaintiff.

(b) Two (2) or more persons may be joined in one (1) action under this part as defendants if those persons are liable to at least one (1) plaintiff.

(c) A plaintiff need not participate in obtaining and a defendant need not participate in defending against all the relief demanded. Judgment may be given for one (1) or more plaintiffs according to their respective rights to relief and against one (1) or more defendants according to their respective liabilities.

Section 29-34-311.

(a) An action by an individual user of an illegal controlled substance is governed by the principles of comparative fault. Comparative fault attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of fault attributed to the plaintiff.

(b) The burden of proving the comparative fault of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

(c) Comparative fault shall not be attributed to a plaintiff who is not an individual user of a controlled substance, unless that plaintiff knowingly gave the individual user money for the purchase of the illegal controlled substance.

Section 29-34-312. A person subject to liability under this part has a right of action for contribution against another person subject to liability under this part. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this part and other laws against a person whom a defendant has asserted a right of contribution.

Section 29-34-313.

(a) Proof of liability in an action brought under this part shall be shown by clear and convincing evidence. Except as otherwise provided in this part, other elements of the cause of action shall be shown by a preponderance of the evidence.

(b)

(1) A person against whom recovery is sought who has a criminal conviction under any state law prohibiting the illegal sale of controlled substances or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513, 84 Stats. 1236, codified at 21 U.S.C. Sec. 801 et seq.), is estopped from denying participation in the illegal market for controlled substances. Except as provided in subpart (b)(2), this subpart does not affect the plaintiff's burden of proving subparts (A), (B), and (C) of Section 29-34-306(b)(2).

(2) Such a conviction is also prima facie evidence of the person's participation in the marketing of a specified illegal controlled substance used by the individual user where that conviction was based upon the person's marketing of that same type of illegal controlled substance.

(c) The absence of a criminal conviction of a person pursuant to subpart (b) against whom recovery is sought does not bar an action against that person in an action pursuant to Section 29-34-306(b)(1) or Section 29-34-307.

Section 29-34-314.

(a) A plaintiff under this part may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award.

(b) The Tennessee Rules of Civil Procedure shall apply to any request under this section.

Section 29-34-315.

(a) Except as otherwise provided in this section, a claim under this part shall not be brought more than one (1) year after the defendant furnishes the specified illegal controlled substance. A cause of action accrues under this part when a person who may recover has reason to know of the harm from use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of an illegal controlled substance is the cause of the harm.

(b) For a defendant, the statute of limitations under this section does not expire until one (1) year after the individual potential defendant is convicted of a criminal offense involving an illegal controlled substance or as otherwise provided by law.

Section 29-34-316. On motion by a governmental agency involved in an investigation or prosecution involving an illegal controlled substance, an action brought under this part shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of execution.

Section 29-34-317. No cause of action shall arise based on any act by a defendant which occurred prior to the effective date of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it and shall apply to all causes of action arising on or after such date.

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